

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Coordinated Ranches, Inc.  
d/b/a Pine Grove Resort Ranch :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Years Ended 10/31/79 - 10/31/81.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of October, 1984, he served the within notice of Decision by certified mail upon Coordinated Ranches, Inc., d/b/a Pine Grove Resort Ranch the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Coordinated Ranches, Inc.  
d/b/a Pine Grove Resort Ranch  
Pine Grove Resort Ranch  
Kerhonkson, NY 12446

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
5th day of October, 1984.

David Parchuck

James P. Harnish  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Coordinated Ranches, Inc. :  
d/b/a Pine Grove Resort Ranch :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Years Ended 10/31/79 - 10/31/81.

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of October, 1984, he served the within notice of Decision by certified mail upon Steven K. Borden, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steven K. Borden  
Goodfriend & Borden  
35 E. Grassy Sprain Rd.  
Yonkers, NY 10710

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
5th day of October, 1984.

David Parchuck

Ann M. P. Hagedorn  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 5, 1984

Coordinated Ranches, Inc.  
d/b/a Pine Grove Resort Ranch  
Pine Grove Resort Ranch  
Kerhonkson, NY 12446

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Steven K. Borden  
Goodfriend & Borden  
35 E. Grassy Sprain Rd.  
Yonkers, NY 10710  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
COORDINATED RANCHES, INC.	:	DECISION
D/B/A PINEGROVE RESORT RANCH	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Years	:	
Ended October 31, 1979 through October 31, 1981.	:	

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Petitioner, Coordinated Ranches, Inc. d/b/a Pinegrove Resort Ranch, Kerhonkson, New York 12446, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended October 31, 1979 through October 31, 1981 (File No. 40245).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1984 at 9:15 A.M., with additional information to be submitted by May 24, 1984. Petitioner appeared by Steven K. Borden, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner qualified for the eligible business facility credit under section 210.11 of the Tax Law or for the investment tax credit under section 210.12 of the Tax Law.

FINDINGS OF FACT

1. For the fiscal years ended October 31, 1979 through October 31, 1981, petitioner, Coordinated Ranches, Inc. d/b/a Pinegrove Resort Ranch, filed New

York State corporation franchise tax reports. On each of such reports, petitioner claimed an investment tax credit.

2. On October 6, 1982, the Audit Division issued three notices of deficiency against petitioner. The first was in the amount of \$2,279.00, plus interest of \$762.03, for a total due of \$3,041.03 for the tax year ended October 31, 1979. The second was in the amount of \$2,495.00, plus interest of \$622.17, for a total due of \$3,117.17 for the tax year ended October 31, 1980. The third notice was in the amount of \$4,862.00, plus interest of \$620.44, for a total due of \$5,482.44 for the tax year ended October 31, 1981. Statements of audit adjustment accompanying the notices of deficiency explained that "[i]nasmuch as the corporation is operating a hotel resort which is a service industry and is not engaged in farming, we are disallowing your investment tax credit."

3. Petitioner owns and operates the Pinegrove Resort Ranch in Kerhonkson, Ulster County, New York. The resort is a tourist ranch more commonly known as a "dude" ranch. Petitioner's president, Richard Tarantino, was actively involved in promoting tourism in Ulster County which, during the years in issue, was an economically depressed area with a large unemployment rate. Petitioner expanded its operations and steadily increased its number of employees and the dollar amount spent on salaries during the years in issue. As a result, Mr. Tarantino believed petitioner was qualified for the eligible business facility credit under Article 9-A of the Tax Law.

4. Petitioner's accountant wrote to the New York State Job Incentive Board for information on applying for a Certificate of Eligibility for franchise tax credits. The Job Incentive Board responded with information and an application form. Petitioner's accountant completed the application and gave it to Mr. Tarantino for submission to the Job Incentive Board. Petitioner submitted

an unsworn statement from Mr. Tarantino in which Mr. Tarantino claims that he submitted the application and received a Certificate of Eligibility but that he lost the certificate during a move to new offices.

5. On July 1, 1983, the Job Incentive Board was abolished and its records were turned over to the Department of Taxation and Finance. Petitioner asked a Department representative to investigate the records to ascertain whether an application or certificate for petitioner was on file. The Department advised petitioner that no application or certificate for petitioner could be found. Following the hearing, the Audit Division requested a representative of the Commerce Department to search its records for any reference to petitioner. The Commerce Department review revealed only petitioner's letter of inquiry and the response to said letter referred to in Finding of Fact "4"; no completed application was discovered. The Department of Taxation and Finance also reviewed a list of all companies approved for job incentive credits. Petitioner was not on the list of approved companies.

6. Other than the letter from Mr. Tarantino, there was no evidence that petitioner submitted an application, received a Certificate of Eligibility or renewed its eligibility on an annual basis for each of the years in issue.

#### CONCLUSIONS OF LAW

A. That section 210.11(a) of the Tax Law provides that a taxpayer who owns or operates an eligible business facility, as defined in section 115 of the Commerce Law, is allowed a credit against the franchise tax on business corporations. Section 210.12(f) of the Tax Law provides that, at the option of the taxpayer, property which qualifies for both the investment tax credit provided for in section 210.12(b) and the eligible business facility credit may

be treated as eligible for the investment tax credit in lieu of the eligible business facility credit.

B. That section 115(d) of the Commerce Law defines the term "eligible business facility" as a place of business located in an eligible area, which meets the requirements set forth in section 118 of the Commerce Law, and for which a Certificate of Eligibility has been issued by the Job Incentive Board. A facility for which such a certificate is issued shall be deemed an eligible business facility only during the taxable year or as of the taxable status date.


C. That the review by the Commerce Department and Department of Taxation and Finance which did not disclose any evidence of petitioner's filing of an application, the issuance of a Certificate of Eligibility, or the annual renewal of such eligibility, together with petitioner's inability to locate its certificate as claimed, indicates that petitioner did not file an application and receive a Certificate of Eligibility. Therefore, petitioner was not eligible for a tax credit under section 210.11(a) of the Tax Law and, moreover, no showing was made that petitioner was otherwise qualified for the investment tax credit under section 210.12(b) of the Tax Law.

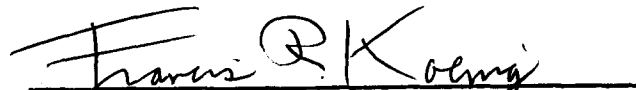
D. That the petition of Coordinated Ranches, Inc. d/b/a Pinegrove Resort Ranch is denied and the notices of deficiency issued October 6, 1982 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER